

REMARKS

Claims 1-20 are currently pending in the present application. Claims 1, 9, and 17 are amended. The drawings are also amended. No new matter is presented. In view of the above amendments and the following remarks, Applicant request the favorable consideration of claims 1-20.

In response to the election requirement, Applicants elect Group I, Claims 1 - 20 without traverse. Claims 1-20 are directed to an apparatus for fixing a plate to a boney material. In view of the above election, Applicants request the consideration of claims 1-20.

The drawings are objected to for failing to include reference signs that are mentioned in the description. Please replace the drawings with the Figures 1-16 provided in the attached replacement sheets. No new matter is presented. In view of the submission of the formalized drawings, Applicant requests the withdrawal of the objection to the drawings.

The Office Action also indicates that claims 1-20 are provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 8-23 of co-pending patent application No. 11/097,340. The Examiner states that the conflicting claims although not identical are not patentably distinct. Applicant respectfully requests that this rejection be held in abeyance until the end of prosecution.

CLAIM REJECTIONS UNDER 35 USC §102

Claims 1-20 under 35 U.S.C. § 102(b) as being anticipated by Fiz (U.S. Patent 6,241,731. The Examiner takes the position that Fiz teaches or suggests all the features recited in claims 1-20. Applicant respectfully disagrees.

Fiz is directed to a plate and screw assembly for fixing bone pieces. Fiz discloses an assembly which includes a plate and at least one screw, the plate includes at least one orifice that defines a cavity for housing a head of the screw and the screw head is provided with a resilient retainer for retaining the head of the screw within the cavity with free pivotal movement but prevented from any axial movement, so that the screw is prevented from moving out of the orifice of the plate.

It is respectfully submitted that Fiz fails to teach or suggest all the features recited in independent claims 1, 9, and 17 of the present application. Specifically, Fiz fails to teach or suggest that a profile of the head does not change shape when the head engages and passes the interference point. In contrast to the claimed invention, Fiz discloses a head that is provided with a peripheral annular outer groove 9 that is defined between upper and lower flanges 5, 6, which is capable of receiving an annular projection of a resilient cap 7. (See Column 4, Lines 7-10). In other words, Fiz discloses a head that comprises a resilient cap that changes the shape of the head and communicates with the annular outer groove 9 of the inner portion of the head when the head contacts a plate. As a result, when the fastener is inserted into the upper opening 13 of the plate, as pressure is applied on the resilient cap 7 of the fastener, a portion of the resilient cap is compressed so that the annular projection enters the annular outer groove 9. (See Figure 2 of Fiz). Once the head of the fastener passes the interference point, the resilient cap

returns to its normal position since the diameter of the spherical curvature is greater after the interference point. In contrast to the teachings of Fiz, the claimed invention does not provide a head that changes shape when the head engages and passes the interference point of the plate. The present invention does not rely on the deformation of the head of the fastener. Fiz discloses that the head of the fastener changes shape so that the fastener can be retained within the spherical curvature of the plate. Therefore, it is submitted that Fiz fails to teach or suggest that a profile of the head does not change shape when the head engages and passes the interference point. Since Fiz does not teach or suggest at least this feature of the claimed invention, Applicant requests that the rejection of claims 1, 9, and 17 under 35 U.S.C. 102(b) be withdrawn.

Claims 2-8, 10-16, and 18-20 are dependent upon independent claims 1, 9, and 17. It is submitted that these claims recite patentable subject matter for at least the reasons mentioned above. Therefore, Applicant requests the withdrawal of the rejection of claims 2-8, 10-16, and 18-20 under 35 U.S.C. 102(b).

CONCLUSION

All claims are believed to be in condition for allowance. If the Examiner believes that the present amendments still do not resolve all of the issues regarding patentability of the pending claims, Applicants invite the Examiner to contact the undersigned attorney to discuss any remaining issues. If any additional fee is required for entry of the present amendments, please charge such fee to Globus Medical Deposit Account No. 50-4131.

Respectfully submitted,

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By 

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